

## LORD CAMPBELL AND RUSHTON—A VINDICATION.

In a monograph of some 48 pages<sup>1</sup> Sir George Greenwood makes certain statements which are well worth making note of in the CANADIAN BAR REVIEW as the monograph is rather scarce. He writes: "In the year 1859 Lord Campbell, who in that year became Lord Chancellor, having previously (in 1850) been Lord Chief Justice of the Queen's Bench, published a book in the form of a letter to Mr. Payne Collier, entitled *Shakespeare's Legal Acquirements*,<sup>2</sup> in which he contended that Shakespeare had 'a deep technical knowledge of the law,' and an easy familiarity with 'some of the most abstruse proceedings in English jurisprudence.' With regard to the poet's 'judicial phrases and forensic allusions' Lord Campbell writes: 'I am amazed, not only by their number, but by the accuracy and propriety with which they are uniformly introduced.' And on the question as to the means by which Shakespeare could have acquired all this legal knowledge, he expresses himself as strongly inclining to the hypothesis that the dramatist had studied law in an attorney's office." Greenwood proceeds: "Lord Campbell's great experience as a lawyer, and the high position which he held in the legal profession, naturally led to a very general acceptance of his opinion of the matter of Shakespeare's knowledge of law," etc. So far so good, but Greenwood proceeds emphatically: "Now Lord Campbell had been anticipated in this enquiry by a learned barrister of Gray's Inn, to wit, Mr. William Lowes Rushton, who in August, 1858, a year before the issue of Lord Campbell's book, had published a little work called *Shakespeare a Lawyer*, in which he also adduced arguments well worthy of consideration in support of the contention that Shakespeare had an accurate knowledge of law, and the author subsequently complained, and it appears not without justice, that the Lord Chancellor had made use of his work, *but had omitted to make reference to the source upon which he had drawn.*

<sup>1</sup> Shakespeare's Law by Sir George Greenwood, of the Middle Temple, Barrister-at-Law. London: Cecil Palmer, Oakley House, Bloomsbury Street. 1920, 2/6 net. 8 vo. We now speak of "The Lord Chief Justice of England," but that title dates only from the year 1875, although Coke had tried to assume it, and was informed, when he was dismissed in the year of Shakespeare's death, that he had incurred the displeasure of the King by so doing. Upon this matter we read in the modern *Encyclopaedia of the Laws of England*: "Shakespeare, ever accurate in his legal terminology, styles Gascoigne, C.J. 'Lord Chief Justice of the King's Bench' in the *dramatis personae* of 'King Henry IV, Part 2.'" (Note in Greenwood.)

<sup>2</sup> Shakespeare's Legal Acquirements considered by John, Lord Campbell, LL.D., F.R.S.E., in a letter to J. Payne Collier, Esq., F.S.A. "Thou art clerkly, thou art clerkly"! *Merry Wives of Windsor*. London: John Murray, Albemarle Street. 1859. 8 vo.

"It is well known," said a writer in one of the newspapers of that day,<sup>8</sup> "that Lord Campbell, some time afterwards, published a similar work, availing himself, *without acknowledgment*, of Mr. Rushton's labours, as *The Examiner* conclusively pointed out." Mr. Rushton's book has become scarce, and it is now very difficult to obtain a copy of it.

Greenwood states in his monograph that he was a septuagenarian when he wrote it, and I learn from the Under Treasurer of the Middle Temple that he died on 27th October, 1923.

I know right well that Rushton's book had become scarce, and that it is very difficult to obtain a copy of it, as for a number of years past I have had an order for it with a London bookseller, without results. From what Greenwood wrote it would appear that he never saw a copy, otherwise he would not have besmirched the fair fame of Lord Campbell by spreading a slander, as he did. One can hardly believe that any writer, especially of Sir George's standing, and a lawyer, would take such a statement for granted, without investigation. All he had to do was to examine Rushton's work, a copy of which was available to him in the British Museum.

Not being prepared to accept Greenwood's *ipse dixit* it may be of interest to set out the steps I took to secure a copy.

In *The Atlantic Monthly* of June 1931 there appeared an article by Professor Whicher, of Amherst College—"Shakespeare for America"—dealing with the Folger Shakespeare Library in Washington, said to house the most valuable collection of Elizabethan literature in the world. Through the kindness of Professor Whicher I got in touch with Mr. Slade, director of the library, who stated that there was a copy of the book in the Folger Library, and who very kindly offered me facilities to have an abstract made, but this was not what I required for the purpose of comparison. Then I turned to Scotland and wrote Mr. Leadbetter, vice-dean of the Faculty of Advocates, but found out from him that the Advocates Library was no more, although the advocates had at their own cost maintained this great library for 250 years, but some nine years ago the burden became too great to be borne any longer and the Faculty made a present of their library to the nation, retaining only the strictly professional legal works, so that Rushton was no longer in the Advocates Library but in the National Library of Scotland, by the regulations of which the trustees are strictly prohibited from lending any

<sup>8</sup> *The Liverpool Albion*. Mr. Rushton was closely connected with Liverpool. We may notice that Lord Campbell's letter to Payne Collier bears date, in his book, September 15, 1858, though the book itself was not published till 1859. Mr. Rushton's book was published in the first week of August, 1858. (Note in Greenwood.)

of its contents outside the country. While unable to comply with my request, Mr. Leadbetter advised me that he knew of copies in the British Museum and in the Edinburgh University Library. So to the British Museum I repaired. Through my booksellers I ordered a copy to be made. They suggested a photographic copy, and here it is before me, a little book of 50 pages,  $6\frac{3}{4} \times 4\frac{1}{4}$ .<sup>4</sup>

A careful perusal of this pamphlet and a comparison with that of Lord Campbell's enables me, as I shall presently show, to clear Lord Campbell of this foolish charge. In the language of the street, there is nothing to it, and I consider that Sir George Greenwood, instead of spreading the libel or slander, should have scotched it.

Had Rushton been the first to find out that the plays of Shakespeare bristle with legal allusions and, as a consequence, published his pamphlet, there might have been some justification for saying that Lord Campbell copied Rushton's idea; but the fact is, that long before Rushton's time, Malone, a lawyer and Shakespearean critic (1741-1812), had written of Shakespeare: "His knowledge and application of legal terms seems to me not merely such as might be acquired by the casual observation of even his all-comprehending mind: it has the appearance of technical skill," and then there was Chalmers (1759-1834), who first suggested the idea. So far as I have been able to discover, Rushton never himself (and I believe that I have all his other writings) complained of any liberties taken by Lord Campbell, and the newspapers, who took up the cudgels for him, were evidently under the impression that Rushton made the discovery, which Chalmers did many years before, as the way Rushton dealt with the matter would be something new to them. All that Lord Campbell did was to write on the same subject. It is worth while to keep in mind the circumstances under which the book was published, which takes the form of a letter to J. Payne Collier, a Shakespearean authority, setting forth its *raison d'être* as follows:

"Knowing that I take great delight in Shakespeare's plays, and that I have paid some attention to the common law of this realm, and recollecting that both in my 'Lives of the Chancellors,' and in my 'Lives of the Chief Justices,' I have glanced at the subject of Shakespeare's legal acquirements, you demand rather peremptorily my opinion upon the question keenly agitated of late years, whether Shakespeare was a clerk in an attorney's office at Stratford before he joined the players in London?"

When Mrs. Cowden Clarke, in 1844-45, published her *Complete Concordance to Shakespeare*, she probably did not realise the benefit

<sup>4</sup> Shakespeare a Lawyer, by William L. Rushton. London: Longman, Brown, Green, Longmans and Roberts. Liverpool: Webb and Hunt, Castle Street. MDCCCLVIII. Price One Shilling, 8 vo.

she was conferring on commentators of the plays by her spade work. If you want to write a book on the plays you work with the *Concordance*, a veritable mine for the commentator, at your elbow.

An excellent list of such books is given in the *Enc. Brit.*, 11th edn., vol. 24, p. 796 (you will not find it in the latest edition), evidencing Shakespeare's special knowledge, ranging from angling to archery, and including law, medicine, psychology, natural history, philosophy, religion, the supernatural, etc. Without the use of the *Concordance*, the preparation of these books would have been no easy task, and no doubt both Lord Campbell and Rushton made use of it. As an illustration, we will take the case of a party writing on the animals of Shakespeare's time. He will turn to the *Concordance* and find them listed there. He has the act and scene at hand, from which he can write all he knows, or can find out. The same method would apply to one writing about trees, flowers, etc.; or, if one wanted to air his knowledge of nautical matters as depicted in *The Tempest*, he could find out all such terms in the *Concordance*.

This, it appears to me, is the way Rushton worked. He would find out all the technical legal words listed in the *Concordance*. He would select, say, the word *fee-simple*, which he would set down as found therein. Then he would repair to the law books and amplify the meaning of the word, mostly from Coke-Littleton.

The method adopted by Lord Campbell was different. He selects twenty-three of the canon of thirty-seven plays, dealing with each play separately, and writing interesting notes amplifying some legal allusion. While Lord Campbell's is much more the artistic method, it is only fair to say that Rushton was a very young man in 1858, when his book was published and had, apparently, not then been called to the Bar. Forty years later, Rushton was still writing books commenting on the plays.

It requires no genius to pick out legal allusions in the works of Shakespeare, especially with the help of a concordance, while many would suggest themselves to the non-legal mind. The charge made in Sir George Greenwood's book is that Lord Campbell had made use of Rushton's work, *but had omitted to make reference to the source from which he had drawn, and that he had availed himself without acknowledgment of Mr. Rushton's labours.*

Now what did Lord Campbell copy from Rushton? Nothing that I can find. What were Mr. Rushton's labours? I have already defined what they were. Rushton can have no monopoly in the quotations, and Lord Campbell certainly does not *draw* from any comment Rushton makes.

I have selected and could give, were it necessary to do so, the quotations given by Lord Campbell and those given by Rushton for purposes of comparison, but I consider that that would be a work of supererogation. That Lord Campbell had selected the same quotations as Rushton proves nothing. Many quotations in Rushton are not in Campbell, and *vice versa*. After a careful study of both books, I say most emphatically that the charge of plagiarism fails. Even now one might write a book on Shakespeare's knowledge of the law, using many of the quotations given in both books, but with different comment, yet he would not be a plagiarist. On the completion of Rushton and Lord Campbell's labours, the mine had not been exhausted. A learned barrister in a work<sup>5</sup> was able to note fifty-five passages in *Measure for Measure* indicating Shakespeare's knowledge of law, whereas Lord Campbell had found only four; but, in justice to Lord Campbell, it should be mentioned that his object was rather to throw out hints which might be useful to others who should pursue the same line of enquiry than fully to work out his problem.

In conclusion I submit that, in view of the fact that Lord Campbell made no use of Rushton's comments—indeed, it is not to be supposed that he would resort to that—no charge of plagiarism can lie against him.

T. M. WEARS.

Strathmore, Alberta.

<sup>5</sup> "Was Shakespeare a Lawyer?" By "H.T." London: Longmans, Green, Reader and Dyer. 1871. 8 vo.

---